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# **Transportation Committee**

**Thursday, January 26, 2006  
1:00 P.M. - 3:30 P.M.  
404 HOB**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 1/18/2006 4:06:33PM)

Amended(1)

### Transportation Committee

**Start Date and Time:** Thursday, January 26, 2006 01:00 pm

**End Date and Time:** Thursday, January 26, 2006 03:30 pm

**Location:** 404 HOB

**Duration:** 2.50 hrs

#### Consideration of the following bill(s):

HB 187 CS Lawful Testing for Alcohol, Chemical Substances, or Controlled Substances by Porth  
HB 375 Motor Vehicle Registration by Barreiro  
HB 385 Specialty License Plates by Jordan  
HB 473 Salvage Motor Vehicle Dealers by Kravitz

Presentations by state, regional, and local governmental entities regarding preparedness of Florida's emergency evacuation route system and current planning and coordination efforts.

NOTICE FINALIZED on 01/18/2006 16:06 by Rousseau.Tiffany



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 187 CS  
Substances

Lawful Testing for Alcohol, Chemical Substances, or Controlled

**SPONSOR(S):** Porth and others

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 232

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Transportation Committee		Rousseau T.R.	Miller P.M.
3) Transportation & Economic Development Appropriations Committee			
4) Justice Council			
5)			

### SUMMARY ANALYSIS

HB 187 increases the sanction for refusing to submit to a lawful test of breath, urine or blood when an officer has reasonable cause to believe that a person was driving under the influence. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a prior refusal to submit to such a test. As a result of the bill, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill makes a corresponding change to the relevant boating under the influence (BUI) statutes.

In order for a breath or blood test to be considered valid it must be performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department. Upon the request of the person tested, the law requires that full information concerning the test taken at the direction of the law enforcement officer must be made available to the person or his or her attorney. The bill specifies what information must be provided and provides that full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information will not include information in the possession of the manufacturer of the test instrument.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government / Safeguard Individual Liberty: The bill makes it a first degree misdemeanor for a person to refuse to submit to a lawful breath, urine or blood test in a DUI or BUI case.

Promote Personal Responsibility: The bill will provide for increased sanctions for refusal to submit to a lawful breath, urine or blood test in DUI and BUI cases.

#### B. EFFECT OF PROPOSED CHANGES:

##### DUI/BUI

The offense of driving under the influence<sup>1</sup> (DUI) is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent that the person's normal faculties are impaired;
- The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

The offense is punishable as follows<sup>2</sup>:

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.<sup>3</sup>
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.

A third conviction that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail<sup>4</sup> and up to five years in prison and a fine of up to \$1000.<sup>5</sup> A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.<sup>6</sup>

Section 327.35, F.S. prohibits the offense of boating under the influence (BUI) which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

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<sup>1</sup> s. 316.193(1), F.S.

<sup>2</sup> s. 316.193(2), F.S.

<sup>3</sup> s. 316.193(6)(b), F.S.

<sup>4</sup> s. 316.193(6)(c), F.S.

<sup>5</sup> s. 316.193(2)(b), F.S.

<sup>6</sup> Additionally, a person who has been convicted of DUI faces suspension of his or her driving privilege and may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

## **Implied consent**

Section 316.1932, F.S., sets forth what is commonly known as the implied consent law. Specifically, section 316.1932(1)(a)1, F.S. provides that:

Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages.

Similarly, section 316.1932(1)(a)2, F.S. provides that a person who accepts the privilege of driving in the state is deemed to have consented to a urine test for the purpose of detecting the presence of a chemical substance or controlled substance. A breath or urine test must be incidental to a lawful arrest at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence.

A person is deemed to have given his or her consent to a blood test even if the person has not yet been arrested, if there is reasonable cause to believe the person was driving under the influence, if the person appears for treatment at a medical facility and if the administration of a breath or urine test is impractical or impossible.<sup>7</sup>

When an officer requests the breath, urine or blood test, the offender must be told that:

- Refusal to submit to the test will result in the suspension of the offender's driving privilege for one year.
- Refusal to submit to the test will result in the suspension of the offender's driving privilege for 18 months if the offender's driving privilege has previously been suspended for a refusal to submit.
- Refusal to submit to test is a misdemeanor if the offender's driving privilege has previously been suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood.

According to the Department of Highway Safety & Motor Vehicles, there were 23,517 driver license suspensions in 2003 and 23,058 in 2004 for refusal to consent to a lawful test of breath, urine or blood.

## **Sanctions for refusing to comply**

Prior to the 2002 legislative session, if a driver refused to submit to a breath, blood or urine test after an arrest for driving under the influence (DUI), their driving privilege would be suspended. The refusal to submit was not a criminal offense. During the 2002 session, the law was changed to make a refusal to submit to a breath, urine or blood test a first degree misdemeanor if the offender's driving privilege has previously been suspended for a refusal to submit.<sup>8</sup>

Specifically, section 316.1939, F.S. provides that a person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine as described in s. 316.1932, F.S., and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine or blood:

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<sup>7</sup> s. 316.1932(1)(c), F.S. The refusal to submit to a breath, urine or blood test is admissible into evidence in any criminal proceeding. The result of any test pursuant to this section which indicates the presence of a controlled substance is not admissible in a trial for the possession of a controlled substance. s. 316.1932(2), F.S.

<sup>8</sup> See 2002-263, Laws of Fla.

1. Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.
2. Who was placed under lawful arrest for a violation of s. 316.193, unless such test was requested pursuant to s. 316.1932(1)(c)<sup>9</sup>.
3. Who was informed that if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months, and that the refusal to submit to such test is a misdemeanor.
4. Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer commits a first degree misdemeanor, punishable by up to one year in jail.

HB 187 amends s. 316.1939, F.S. to make it a first degree misdemeanor to refuse to consent to a lawful test of breath, urine or blood under the circumstances described above. Currently, such a refusal is a misdemeanor only if the person's driving privilege has previously been suspended for a refusal to submit to such a test. As a result, a first refusal to submit to a breath, blood or urine test will subject a person to having their driving privilege suspended for a year (as under current law) and to possible imprisonment for up to one year in county jail. The bill also amends s. 316.1932, F.S. to require that an officer inform a person that his or her refusal to submit to the test will be punishable as a misdemeanor. The bill makes a corresponding change to the relevant BUI statutes, ss. 327.352 and 327.359, F.S.

### **Full information**

In order for a breath or blood test to be considered valid it must be performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department.<sup>10</sup> Upon the request of the person tested, full information concerning the test taken at the direction of the law enforcement officer must be made available to the person or his or her attorney.<sup>11</sup>

In State v. Muldowny, 871 So.2d 911 (Fla. 2005), the Fifth District Court of Appeal stated that because this section requires that full information be disclosed:

It must necessarily follow that when a person risks the loss of driving privileges or perhaps freedom based upon the use and operation of a particular machine, full information includes operating manuals, maintenance manuals and schematics in order to determine whether the machine actually used to determine the extent of a defendant's intoxication is the same unmodified model that was approved pursuant to statutory procedures. It seems to us that one should not have privileges and freedom jeopardized by the results of a mystical machine that is immune from discovery, that inhales breath samples and that produces a report specifying a degree of intoxication.

The State had argued that it did not have possession of the requested information and that it was trade secret. The DCA affirmed the trial court's ruling excluding the breath test results. This is the only reported decision on this issue. Trial courts around the state have been divided on the issue.

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<sup>9</sup> s. 316.1932(1)(c) applies in cases in which there is reasonable cause to believe that the person was driving which under the influence and the person appears for treatment at a hospital, clinic or other medical facility and the administration of a breath or urine test is impractical or impossible.

<sup>10</sup> ss. 316.1934(3) and 327.354(3), F.S.

<sup>11</sup> 316.1932(1)(f)4, F.S.

The bill provides that full information will be provided concerning the *results of the test taken* and provides that full information is limited to the following:

1. The type of test administered and the procedures followed;
2. The time of the collection of the blood or breath test sampled;
3. The numerical results of the test indicating the alcohol content of the blood and breath;
4. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and
5. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance of such instrument.

The bill also provides that full information does not include manual, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 316.1932, F.S. relating to refusal to submit to a breath, urine or blood test.

Section 2. Amends s. 316.1939, F.S.; removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in DUI case.

Section 3. Amends s. 327.352, F.S. relating to refusal to submit to breath, urine or blood test in BUI cases.

Section 4. Amends s. 327.359, F.S.; removing prior suspension as a condition for commission of misdemeanor by refusal to submit to a breath, urine or blood test in BUI case.

Section 5. Provides October 1, 2005 effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D. Fiscal Comments.

2. Expenditures:

See D. Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill will make a first refusal to submit to a lawful breath, urine or blood test a first degree misdemeanor. Currently, a person commits a misdemeanor in refusing to submit to a breath, urine or blood test only if the person's driving privilege had previously been suspended for a refusal to submit to a test. A first degree misdemeanor is punishable by up to a year in county jail. This may have an impact on county court caseloads and county jail populations. In recent years more than 20,000 drivers per year have refused to consent to the tests. The new law could reduce the number of first-time refusals, but how the proposed change would affect the number is unknown.



**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Individuals refusing for the first time to submit to a lawful breath, urine or blood test of alcohol or of chemical or controlled substances would be subject to misdemeanor penalties.

**D. FISCAL COMMENTS:**

The Department of Highway Safety and Motor Vehicles reports that the bill will not have a fiscal impact on the department. The Criminal Justice Impact Conference has not estimated the bill's fiscal impact.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

As originally filed, the bill expanded the circumstances in which a law enforcement officer could require that a blood sample be taken in DUI and BUI cases. The Criminal Justice Committee amended the bill to remove this provision. The amendment also added the language relating to information that must be provided to a person who is the subject of a breath or blood test.

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## CHAMBER ACTION

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1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to lawful testing for alcohol, chemical  
7 substances, or controlled substances; amending s.

8 316.1932, F.S.; revising provisions to notify a person  
9 that refusal to submit to a lawful test of the person's  
10 breath, urine, or blood is a misdemeanor, to conform to  
11 changes made by the act; limiting information to be made  
12 available to a person tested to determine the amount of  
13 alcohol in the person's blood or breath or the presence of  
14 chemical substances or controlled substances; amending s.

15 316.1939, F.S.; removing prior suspension as a condition  
16 for the commission of a misdemeanor by refusal to submit  
17 to a lawful test of breath, urine, or blood; amending s.  
18 327.352, F.S.; revising provisions to notify a person that  
19 refusal to submit to a lawful test of the person's breath,  
20 urine, or blood is a misdemeanor, to conform to changes  
21 made by the act; limiting information to be made available  
22 to a person tested to determine the amount of alcohol in  
23 the person's blood or breath or the presence of chemical

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substances or controlled substances; amending s. 327.359, F.S.; removing prior suspension as a condition for the commission of a misdemeanor by refusal to submit to a lawful test of breath, urine, or blood; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (c), and (f) of subsection (1) of section 316.1932, Florida Statutes, are amended to read:

316.1932 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1.a. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does

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52 not preclude the administration of another type of test. The  
53 person shall be told that his or her failure to submit to any  
54 lawful test of his or her breath will result in the suspension  
55 of the person's privilege to operate a motor vehicle for a  
56 period of 1 year for a first refusal, or for a period of 18  
57 months if the driving privilege of such person has been  
58 previously suspended as a result of a refusal to submit to such  
59 a test or tests, and shall also be told that if he or she  
60 refuses to submit to a lawful test of his or her breath ~~and his~~  
61 ~~or her driving privilege has been previously suspended for a~~  
62 ~~prior refusal to submit to a lawful test of his or her breath,~~  
63 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
64 any other penalties. The refusal to submit to a chemical or  
65 physical breath test upon the request of a law enforcement  
66 officer as provided in this section is admissible into evidence  
67 in any criminal proceeding.

68       b. Any person who accepts the privilege extended by the  
69 laws of this state of operating a motor vehicle within this  
70 state is, by so operating such vehicle, deemed to have given his  
71 or her consent to submit to a urine test for the purpose of  
72 detecting the presence of chemical substances as set forth in s.  
73 877.111 or controlled substances if the person is lawfully  
74 arrested for any offense allegedly committed while the person  
75 was driving or was in actual physical control of a motor vehicle  
76 while under the influence of chemical substances or controlled  
77 substances. The urine test must be incidental to a lawful arrest  
78 and administered at a detention facility or any other facility,  
79 mobile or otherwise, which is equipped to administer such tests

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80 at the request of a law enforcement officer who has reasonable  
81 cause to believe such person was driving or was in actual  
82 physical control of a motor vehicle within this state while  
83 under the influence of chemical substances or controlled  
84 substances. The urine test shall be administered at a detention  
85 facility or any other facility, mobile or otherwise, which is  
86 equipped to administer such test in a reasonable manner that  
87 will ensure the accuracy of the specimen and maintain the  
88 privacy of the individual involved. The administration of a  
89 urine test does not preclude the administration of another type  
90 of test. The person shall be told that his or her failure to  
91 submit to any lawful test of his or her urine will result in the  
92 suspension of the person's privilege to operate a motor vehicle  
93 for a period of 1 year for the first refusal, or for a period of  
94 18 months if the driving privilege of such person has been  
95 previously suspended as a result of a refusal to submit to such  
96 a test or tests, and shall also be told that if he or she  
97 refuses to submit to a lawful test of his or her urine and his  
98 ~~or her driving privilege has been previously suspended for a~~  
99 ~~prior refusal to submit to a lawful test of his or her breath,~~  
100 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
101 any other penalties. The refusal to submit to a urine test upon  
102 the request of a law enforcement officer as provided in this  
103 section is admissible into evidence in any criminal proceeding.

104 2. The Alcohol Testing Program within the Department of  
105 Law Enforcement is responsible for the regulation of the  
106 operation, inspection, and registration of breath test  
107 instruments utilized under the driving and boating under the

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influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.

b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.

c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.

d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.

e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.

f. Establish a procedure for the approval of breath test operator and agency inspector classes.

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to

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the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.

j. Enforce compliance with the provisions of this section through civil or administrative proceedings.

k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.

l. Promulgate rules for the administration and implementation of this section, including definitions of terms.

m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.

n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

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p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his



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192 or her consent to such test. A blood test may be administered  
193 whether or not the person is told that his or her failure to  
194 submit to such a blood test will result in the suspension of the  
195 person's privilege to operate a motor vehicle upon the public  
196 highways of this state and that a refusal to submit to a lawful  
197 test of his or her blood, ~~if his or her driving privilege has~~  
198 ~~been previously suspended for refusal to submit to a lawful test~~  
199 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any  
200 person who is capable of refusal shall be told that his or her  
201 failure to submit to such a blood test will result in the  
202 suspension of the person's privilege to operate a motor vehicle  
203 for a period of 1 year for a first refusal, or for a period of  
204 18 months if the driving privilege of the person has been  
205 suspended previously as a result of a refusal to submit to such  
206 a test or tests, and that a refusal to submit to a lawful test  
207 of his or her blood, ~~if his or her driving privilege has been~~  
208 ~~previously suspended for a prior refusal to submit to a lawful~~  
209 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.  
210 The refusal to submit to a blood test upon the request of a law  
211 enforcement officer is admissible in evidence in any criminal  
212 proceeding.

213 (f)1. The tests determining the weight of alcohol in the  
214 defendant's blood or breath shall be administered at the request  
215 of a law enforcement officer substantially in accordance with  
216 rules of the Department of Law Enforcement. Such rules must  
217 specify precisely the test or tests that are approved by the  
218 Department of Law Enforcement for reliability of result and ease  
219 of administration, and must provide an approved method of

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220 administration which must be followed in all such tests given  
221 under this section. However, the failure of a law enforcement  
222 officer to request the withdrawal of blood does not affect the  
223 admissibility of a test of blood withdrawn for medical purposes.

224       2.a. Only a physician, certified paramedic, registered  
225 nurse, licensed practical nurse, other personnel authorized by a  
226 hospital to draw blood, or duly licensed clinical laboratory  
227 director, supervisor, technologist, or technician, acting at the  
228 request of a law enforcement officer, may withdraw blood for the  
229 purpose of determining its alcoholic content or the presence of  
230 chemical substances or controlled substances therein. However,  
231 the failure of a law enforcement officer to request the  
232 withdrawal of blood does not affect the admissibility of a test  
233 of blood withdrawn for medical purposes.

234       b. Notwithstanding any provision of law pertaining to the  
235 confidentiality of hospital records or other medical records, if  
236 a health care provider, who is providing medical care in a  
237 health care facility to a person injured in a motor vehicle  
238 crash, becomes aware, as a result of any blood test performed in  
239 the course of that medical treatment, that the person's blood-  
240 alcohol level meets or exceeds the blood-alcohol level specified  
241 in s. 316.193(1)(b), the health care provider may notify any law  
242 enforcement officer or law enforcement agency. Any such notice  
243 must be given within a reasonable time after the health care  
244 provider receives the test result. Any such notice shall be used  
245 only for the purpose of providing the law enforcement officer  
246 with reasonable cause to request the withdrawal of a blood  
247 sample pursuant to this section.

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c. The notice shall consist only of the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level indicated by the test, and the date and time of the administration of the test.

d. Nothing contained in s. 395.3025(4), s. 456.057, or any applicable practice act affects the authority to provide notice under this section, and the health care provider is not considered to have breached any duty owed to the person under s. 395.3025(4), s. 456.057, or any applicable practice act by providing notice or failing to provide notice. It shall not be a breach of any ethical, moral, or legal duty for a health care provider to provide notice or fail to provide notice.

e. A civil, criminal, or administrative action may not be brought against any person or health care provider participating in good faith in the provision of notice or failure to provide notice as provided in this section. Any person or health care provider participating in the provision of notice or failure to provide notice as provided in this section shall be immune from any civil or criminal liability and from any professional disciplinary action with respect to the provision of notice or failure to provide notice under this section. Any such participant has the same immunity with respect to participating in any judicial proceedings resulting from the notice or failure to provide notice.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other

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person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

a. The type of test administered and the procedures followed.

b. The time of the collection of the blood or breath sample analyzed.

c. The numerical results of the test indicating the alcohol content of the blood and breath.

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302       d. The type and status of any permit issued by the  
303       Department of Law Enforcement which was held by the person who  
304       performed the test.

305       e. If the test was administered by means of a breath  
306       testing instrument, the date of performance of the most recent  
307       required maintenance of such instrument.

308  
309       Full information does not include manuals, schematics, or  
310       software of the instrument used to test the person or any other  
311       material that is not in the actual possession of the state.  
312       Additionally, full information does not include information in  
313       the possession of the manufacturer of the test instrument.

314       5. A hospital, clinical laboratory, medical clinic, or  
315       similar medical institution or physician, certified paramedic,  
316       registered nurse, licensed practical nurse, other personnel  
317       authorized by a hospital to draw blood, or duly licensed  
318       clinical laboratory director, supervisor, technologist, or  
319       technician, or other person assisting a law enforcement officer  
320       does not incur any civil or criminal liability as a result of  
321       the withdrawal or analysis of a blood or urine specimen, or the  
322       chemical or physical test of a person's breath pursuant to  
323       accepted medical standards when requested by a law enforcement  
324       officer, regardless of whether or not the subject resisted  
325       administration of the test.

326       Section 2. Section 316.1939, Florida Statutes, is amended  
327       to read:

328       316.1939 Refusal to submit to testing; penalties.--

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329 (1) Any person who has refused to submit to a chemical or  
330 physical test of his or her breath, blood, or urine, as  
331 described in s. 316.1932, and ~~whose driving privilege was~~  
332 ~~previously suspended for a prior refusal to submit to a lawful~~  
333 ~~test of his or her breath, urine, or blood, and:~~

334 (a) Who the arresting law enforcement officer had probable  
335 cause to believe was driving or in actual physical control of a  
336 motor vehicle in this state while under the influence of  
337 alcoholic beverages, chemical substances, or controlled  
338 substances;

339 (b) Who was placed under lawful arrest for a violation of  
340 s. 316.193 unless such test was requested pursuant to s.  
341 316.1932(1)(c);

342 (c) Who was informed that, if he or she refused to submit  
343 to such test, his or her privilege to operate a motor vehicle  
344 would be suspended for a period of 1 year or, in the case of a  
345 second or subsequent refusal, for a period of 18 months;

346 (d) Who was informed that a refusal to submit to a lawful  
347 test of his or her breath, urine, or blood, ~~if his or her~~  
348 ~~driving privilege has been previously suspended for a prior~~  
349 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
350 ~~or blood, is a misdemeanor; and~~

351 (e) Who, after having been so informed, refused to submit  
352 to any such test when requested to do so by a law enforcement  
353 officer or correctional officer,

354  
355 commits a misdemeanor of the first degree, punishable ~~and is~~  
356 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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(2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under this section.

(3) The disposition of a criminal action under this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. ~~The department's records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood shall be admissible and shall create a rebuttable presumption of such suspension.~~

Section 3. Paragraphs (a), (c), and (e) of subsection (1) of section 327.352, Florida Statutes, are amended to read:

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of

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385    alcoholic beverages. The chemical or physical breath test must  
386    be incidental to a lawful arrest and administered at the request  
387    of a law enforcement officer who has reasonable cause to believe  
388    such person was operating the vessel within this state while  
389    under the influence of alcoholic beverages. The administration  
390    of a breath test does not preclude the administration of another  
391    type of test. The person shall be told that his or her failure  
392    to submit to any lawful test of his or her breath will result in  
393    a civil penalty of \$500~~7~~, and shall also be told that if he or  
394    she refuses to submit to a lawful test of his or her breath ~~and~~  
395    ~~he or she has been previously fined for refusal to submit to any~~  
396    ~~lawful test of his or her breath, urine, or blood,~~ he or she  
397    commits a misdemeanor in addition to any other penalties. The  
398    refusal to submit to a chemical or physical breath test upon the  
399    request of a law enforcement officer as provided in this section  
400    is admissible into evidence in any criminal proceeding.

401        2. Any person who accepts the privilege extended by the  
402    laws of this state of operating a vessel within this state is,  
403    by so operating such vessel, deemed to have given his or her  
404    consent to submit to a urine test for the purpose of detecting  
405    the presence of chemical substances as set forth in s. 877.111  
406    or controlled substances if the person is lawfully arrested for  
407    any offense allegedly committed while the person was operating a  
408    vessel while under the influence of chemical substances or  
409    controlled substances. The urine test must be incidental to a  
410    lawful arrest and administered at a detention facility or any  
411    other facility, mobile or otherwise, which is equipped to  
412    administer such tests at the request of a law enforcement



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413 officer who has reasonable cause to believe such person was  
414 operating a vessel within this state while under the influence  
415 of chemical substances or controlled substances. The urine test  
416 shall be administered at a detention facility or any other  
417 facility, mobile or otherwise, which is equipped to administer  
418 such test in a reasonable manner that will ensure the accuracy  
419 of the specimen and maintain the privacy of the individual  
420 involved. The administration of a urine test does not preclude  
421 the administration of another type of test. The person shall be  
422 told that his or her failure to submit to any lawful test of his  
423 or her urine will result in a civil penalty of \$500, and shall  
424 also be told that if he or she refuses to submit to a lawful  
425 test of his or her urine ~~and he or she has been previously fined~~  
426 ~~for refusal to submit to any lawful test of his or her breath,~~  
427 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
428 any other penalties. The refusal to submit to a urine test upon  
429 the request of a law enforcement officer as provided in this  
430 section is admissible into evidence in any criminal proceeding.

431       (c) Any person who accepts the privilege extended by the  
432 laws of this state of operating a vessel within this state is,  
433 by operating such vessel, deemed to have given his or her  
434 consent to submit to an approved blood test for the purpose of  
435 determining the alcoholic content of the blood or a blood test  
436 for the purpose of determining the presence of chemical  
437 substances or controlled substances as provided in this section  
438 if there is reasonable cause to believe the person was operating  
439 a vessel while under the influence of alcoholic beverages or  
440 chemical or controlled substances and the person appears for

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441 treatment at a hospital, clinic, or other medical facility and  
442 the administration of a breath or urine test is impractical or  
443 impossible. As used in this paragraph, the term "other medical  
444 facility" includes an ambulance or other medical emergency  
445 vehicle. The blood test shall be performed in a reasonable  
446 manner. Any person who is incapable of refusal by reason of  
447 unconsciousness or other mental or physical condition is deemed  
448 not to have withdrawn his or her consent to such test. Any  
449 person who is capable of refusal shall be told that his or her  
450 failure to submit to such a blood test will result in a civil  
451 penalty of \$500 and that a refusal to submit to a lawful test of  
452 his or her blood, ~~if he or she has previously been fined for~~  
453 ~~refusal to submit to any lawful test of his or her breath,~~  
454 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a  
455 blood test upon the request of a law enforcement officer shall  
456 be admissible in evidence in any criminal proceeding.

457 (e)1. The tests determining the weight of alcohol in the  
458 defendant's blood or breath shall be administered at the request  
459 of a law enforcement officer substantially in accordance with  
460 rules of the Department of Law Enforcement. However, the failure  
461 of a law enforcement officer to request the withdrawal of blood  
462 does not affect the admissibility of a test of blood withdrawn  
463 for medical purposes.

464 2. Only a physician, certified paramedic, registered  
465 nurse, licensed practical nurse, other personnel authorized by a  
466 hospital to draw blood, or duly licensed clinical laboratory  
467 director, supervisor, technologist, or technician, acting at the  
468 request of a law enforcement officer, may withdraw blood for the

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469 purpose of determining its alcoholic content or the presence of  
470 chemical substances or controlled substances therein. However,  
471 the failure of a law enforcement officer to request the  
472 withdrawal of blood does not affect the admissibility of a test  
473 of blood withdrawn for medical purposes.

474         3. The person tested may, at his or her own expense, have  
475 a physician, registered nurse, other personnel authorized by a  
476 hospital to draw blood, or duly licensed clinical laboratory  
477 director, supervisor, technologist, or technician, or other  
478 person of his or her own choosing administer an independent test  
479 in addition to the test administered at the direction of the law  
480 enforcement officer for the purpose of determining the amount of  
481 alcohol in the person's blood or breath or the presence of  
482 chemical substances or controlled substances at the time  
483 alleged, as shown by chemical analysis of his or her blood or  
484 urine, or by chemical or physical test of his or her breath. The  
485 failure or inability to obtain an independent test by a person  
486 does not preclude the admissibility in evidence of the test  
487 taken at the direction of the law enforcement officer. The law  
488 enforcement officer shall not interfere with the person's  
489 opportunity to obtain the independent test and shall provide the  
490 person with timely telephone access to secure the test, but the  
491 burden is on the person to arrange and secure the test at the  
492 person's own expense.

493         4. Upon the request of the person tested, full information  
494 concerning the results of the test taken at the direction of the  
495 law enforcement officer shall be made available to the person or

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496 his or her attorney. Full information is limited to the  
497 following:

498 a. The type of test administered and the procedures  
499 followed.

500 b. The time of the collection of the blood or breath  
501 sample analyzed.

502 c. The numerical results of the test indicating the  
503 alcohol content of the blood and breath.

504 d. The type and status of any permit issued by the  
505 Department of Law Enforcement which was held by the person who  
506 performed the test.

507 e. If the test was administered by means of a breath  
508 testing instrument, the date of performance of the most recent  
509 required maintenance of such instrument.

510  
511 Full information does not include manuals, schematics, or  
512 software of the instrument used to test the person or any other  
513 material that is not in the actual possession of the state.  
514 Additionally, full information does not include information in  
515 the possession of the manufacturer of the test instrument.

516 5. A hospital, clinical laboratory, medical clinic, or  
517 similar medical institution or physician, certified paramedic,  
518 registered nurse, licensed practical nurse, other personnel  
519 authorized by a hospital to draw blood, or duly licensed  
520 clinical laboratory director, supervisor, technologist, or  
521 technician, or other person assisting a law enforcement officer  
522 does not incur any civil or criminal liability as a result of  
523 the withdrawal or analysis of a blood or urine specimen, or the

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chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

Section 4. Section 327.359, Florida Statutes, is amended to read:

327.359 Refusal to submit to testing; penalties.--Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 327.352, ~~and who has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood, and:~~

(1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);

(3) Who was informed that if he or she refused to submit to such test he or she is subject to a fine of \$500;

(4) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood, ~~if he or she has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is a misdemeanor; and

(5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer,

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552 | commits a misdemeanor of the first degree, punishable and ~~is~~  
553 | ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.  
554 |       Section 5. This act shall take effect October 1, 2006.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 375  
**SPONSOR(S):** Barreiro  
**TIED BILLS:**

Motor Vehicle Registration

**IDEN./SIM. BILLS:** SB 738

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee		Green 	Miller 
2) Transportation & Economic Development Appropriations Committee			
3) State Infrastructure Council			
4)			
5)			

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### SUMMARY ANALYSIS

HB 375 requires the Department of Highway Safety and Motor Vehicles (DHSMV), to include a check-off for a voluntary \$1.00 contribution to "Stop Heart Disease" on each motor vehicle registration and renewal form. The funds will be distributed to the Florida Heart Research Institute, Inc. Florida Heart Research Institute, Inc. has completed the statutory requirements to seek Legislative enactment of a new voluntary contribution check-off on the motor vehicle registrations.

Currently, the motor vehicle registration and registration renewal form contains seven voluntary contribution check-offs. They include:

- \$1.00 for the Nongame Wildlife Trust Fund
- \$2.00 for the Highway Safety Operating Trust Fund
- \$5.00 for the Election Campaign Financing Trust Fund
- \$1.00 for the Transportation Disadvantaged Trust Fund
- \$1.00 for the Prevent Blindness Florida
- An unspecified amount for Florida Mothers Against Drunk Driving, Inc.
- \$1.00 for the Southeastern Guide Dogs, Inc.

The required \$10,000 fee provided by the Florida Heart Research Institute, Inc. will defray DHSMV's programming costs associated with the development of the motor vehicle registration and renewal application check-off form.

This act will take effect July 1, 2006.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

Section 320.023, F.S., provides a procedure an organization must follow prior to seeking Legislative authorization to establish a voluntary check-off on a motor vehicle registration application. Before the organization is eligible, it must submit to DHSMV at least 90 days before the convening of the Regular Session of the Legislature:

- A request for the particular voluntary contribution being sought, describing it in general terms;
- An application fee of up to \$10,000 to defray DHSMV's costs for reviewing the application and developing the check-off, if authorized; and
- A short and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contributions.

DHSMV must discontinue the check-off if less than \$25,000 has been contributed by the end of the fifth year, or if less than \$25,000 is contributed during any subsequent 5-year period.

Currently, the motor vehicle registration and registration renewal form contains seven voluntary contribution check-offs. They include:

- \$1.00 for the Nongame Wildlife Trust Fund
- \$2.00 for the Highway Safety Operating Trust Fund
- \$5.00 for the Election Campaign Financing Trust Fund
- \$1.00 for the Transportation Disadvantaged Trust Fund
- \$1.00 for the Prevent Blindness Florida
- An unspecified amount for Florida Mothers Against Drunk Driving, Inc.
- \$1.00 for the Southeastern Guide Dogs, Inc.

HB 375 requires the DHSMV to include a check-off for a voluntary \$1.00 contribution to "Stop Heart Disease" on each motor vehicle registration and renewal form. Florida Heart Research Institute, Inc. has completed the statutory requirements authorizing it to seek Legislative enactment of the voluntary contribution check-off. The bill also provides that the funds shall be used for the purpose of heart disease research, education, and prevention programs.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 320.02, F.S., requiring the DHSMV to include a check-off for a voluntary \$1.00 contribution to "Stop Heart Disease" on each motor vehicle registration and renewal form; and provides for the use of funds; exempts such funds from the general revenue service charge.

Section 2. Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

There are no known or expected fiscal impacts on state government revenues.

#### **2. Expenditures:**

The required \$10,000 fee provided by the Florida Heart Research Institute, Inc. will defray DHSMV's programming costs associated with the development of the motor vehicle registration and renewal application check-off.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

There are no known or expected fiscal impacts on local government expenditures.

#### **2. Expenditures:**

There are no known or expected fiscal impacts on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Persons applying for registration or renewal of their vehicle will be permitted to make a \$1.00 voluntary contribution to benefit "Stop Heart Disease." The contribution is not mandatory. The estimated first year revenues are not known.

### **D. FISCAL COMMENTS:**

None

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### **2. Other:**

None

### **B. RULE-MAKING AUTHORITY:**

No rule-making authority is required to implement the provisions of this bill.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None

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1 A bill to be entitled

2 An act relating to motor vehicle registration; amending s.  
3 320.02, F.S.; requiring that the application forms for  
4 registration and renewal contain a provision permitting a  
5 voluntary contribution to be distributed to Florida Heart  
6 Research Institute, Inc.; providing for use of the funds;  
7 exempting such funds from the general revenue service  
8 charge; providing an effective date.  
9

10 Be It Enacted by the Legislature of the State of Florida:  
11

12 Section 1. Subsection (16) of section 320.02, Florida  
13 Statutes, is amended to read:

14 320.02 Registration required; application for  
15 registration; forms.--

16 (16) (a) The application form for motor vehicle  
17 registration shall include language permitting the voluntary  
18 contribution of \$1 per applicant, to be quarterly distributed by  
19 the department to Prevent Blindness Florida, a not-for-profit  
20 organization, to prevent blindness and preserve the sight of the  
21 residents of this state. A statement providing an explanation of  
22 the purpose of the funds shall be included with the application  
23 form. Prior to the department distributing the funds collected  
24 pursuant to this paragraph, Prevent Blindness Florida must  
25 submit a report to the department that identifies how such funds  
26 were used during the preceding year.

27 (b) The application form for motor vehicle registration  
28 and renewal of registration must include language permitting a

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29 voluntary contribution to the Florida Mothers Against Drunk  
30 Driving, Inc., which contribution must be transferred by the  
31 department to the Florida Mothers Against Drunk Driving, Inc.,  
32 on a monthly basis.

33 (c) The application form for motor vehicle registration  
34 shall include language permitting the voluntary contribution of  
35 \$1 per applicant, to be distributed quarterly by the department  
36 to Southeastern Guide Dogs, Inc., a corporation not for profit  
37 under s. 501(c)(3) of the Internal Revenue Code, to be used by  
38 that organization for the purpose of breeding, raising, and  
39 training guide dogs for the blind. Such funds may also be used  
40 toward the costs of the required in-residence training for the  
41 individual receiving a guide dog.

42 (d) The application form for motor vehicle registration  
43 and renewal of registration shall include language permitting a  
44 voluntary contribution of \$1 to "Stop Heart Disease." Such funds  
45 shall be distributed quarterly by the department to the Florida  
46 Heart Research Institute, Inc., a corporation not for profit  
47 under s. 501(c)(3) of the Internal Revenue Code. Funds shall be  
48 used by the organization for the purpose of heart disease  
49 research, education, and prevention programs.

50 (e) For the purpose of applying the service charge  
51 provided in s. 215.20, contributions received under this  
52 subsection are not income of a revenue nature.

53 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 375**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill:     Transportation  
Representative(s)     Barreiro     offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 45-46 and insert:

shall be distributed quarterly by the department to the Miami  
Heart Research Institute, Inc. doing business as the Florida  
Heart Research Institute, a corporation not for profit

===== D I R E C T O R Y   A M E N D M E N T =====

Remove line(s)             and insert:

===== T I T L E   A M E N D M E N T =====

Remove line(s) 5-6 and insert:

voluntary contribution to be distributed to Miami Heart Research  
Institute, Inc.; providing for use of the funds;

000000



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 385

Specialty License Plates

**SPONSOR(S):** Jordan

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u></u>	Thompson <u>J.T.</u>	Miller <u>P.M.</u>
2) <u>Transportation &amp; Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

Under current law the annual use fees for the Police Athletic League License Plates are distributed to the Florida Police Athletic League, Inc., to provide educational materials, athletic equipment, transportation, food, medical checkups, counseling, scholarships, and other direct expenses incurred by the league in conducting its youth programs.

HB 385 directs the Police Athletic League's license plate annual use fees to be distributed to the State of Florida Association of Police Athletic/Activities Leagues, Inc. The purpose is to reflect an administrative change in the corporation name that receives the proceeds from the sale of Police Athletic League license plates. The bill also authorizes the use of up to 15 percent of the proceeds for administrative costs and up to 10 percent for marketing and promotional expenses.

The bill will not have a fiscal impact on the Department of Highway Safety and Motor Vehicles and will take effect July 1, 2006.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Specialty license plates are listed in s. 320.08058, F.S. Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. The legislature has enacted 106 specialty license plates to date, though only 100 are currently available for purchase. Section 320.08056, F.S., specifies annual use fees ranging from \$15 to \$25 for the various specialty plates, which are paid in addition to required license taxes and service charges.

Funds derived from these annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified on the plate's design and designated in s. 320.08058, F.S. This section also provides for the uses of funds derived for each plate from its annual use fee. There is wide variation on the uses of these fees regarding administrative costs and marketing or promotion expenses. For example, the "Support Soccer" license plate<sup>1</sup> allows 25 percent of funds to be used for promotion and marketing and 5 percent to be used for administrative costs; while the "United We Stand" license plate<sup>2</sup> requires that 100 percent of funds be used for airport security grants.

The Police Athletic League license plate<sup>3</sup> was created by the legislature in 1996 by chapter 96-163, Laws of Florida. This license plate ranks 24<sup>th</sup> in popularity for the number of license plates currently issued. The Police Athletic League license plate raised \$328,500 in calendar year 2004, with \$1.8 million raised from 1997 to 2004.

Currently the annual use fees from the Police Athletic League license plates are distributed to the Florida Police Athletic League, Inc., to provide educational materials, athletic equipment, transportation, food, medical checkups, counseling, scholarships, and other direct expenses incurred by the league in conducting its youth programs. The Police Athletic League, Inc. is not authorized to use any portion of the license plate proceeds for administrative, marketing or promotional costs.

##### Proposed Changes

HB 385 amends s. 320.08058, F.S., transferring distribution of the annual use fees of Police Athletic League license plates from the Florida Police Athletic League, Inc., to the State of Florida Association of Police Athletic/Activities Leagues, Inc. The purpose is to reflect an administrative change in the corporation that receives the proceeds from the sale of Police Athletic League license plates.

The bill also authorizes the use of a portion of the funds for administrative and promotional costs. The league may use a maximum of 15 percent of such fees for administrative costs and a maximum of 10 percent to market and promote the plate.

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<sup>1</sup> S. 320.08058 (54), F.S.,

<sup>2</sup> S. 320.08058 (33), F.S.,

<sup>3</sup> S. 320.08058 (16), F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 320.08058, F.S., providing distribution and allocation of annual use fees from the sale of the Police Athletic League license plate.

Section 2. Provides an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a significant direct economic impact on the private sector.

D. FISCAL COMMENTS:

If the bill's provisions were effective in 2004, the Police Athletic League, Inc. would have been authorized to use \$49,275 for administrative costs and \$32,850 for marketing and promotion.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The purpose of the transfer of proceeds is to reflect an administrative change in the corporation that receives the proceeds from the sale of Police Athletic League license plates. The new corporation is on file with the Department of State, Division of Corporations, listed as the State of Florida Association of Police Athletic Leagues/Activities, Inc.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

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1 A bill to be entitled

2 An act relating to specialty license plates; amending s.  
3 320.08058, F.S.; providing for the proceeds from the sale  
4 of Police Athletic League license plates to be distributed  
5 to the State of Florida Association of Police  
6 Athletic/Activities Leagues, Inc.; authorizing the use of  
7 a portion of such fees for administrative and promotional  
8 cost; providing an effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Subsection (16) of section 320.08058, Florida  
13 Statutes, is amended to read:

14 320.08058 Specialty license plates.--

15 (16) POLICE ATHLETIC LEAGUE LICENSE PLATES.--

16 (a) The department shall develop a Police Athletic League  
17 license plate as provided in this section to commemorate the  
18 Police Athletic League in this state. The word "Florida" must  
19 appear at the top of the plate, the words "Police Athletic  
20 League" must appear at the bottom of the plate, and a shield  
21 with the Police Athletic League logo must appear to the left of  
22 the numerals.

23 (b)1. The annual use fees shall be distributed to the  
24 State of Florida Association of Police Athletic/Activities  
25 Leagues, Inc. ~~Florida Police Athletic League, Inc.,~~

26 2. The league may use a maximum of 15 percent of such fees  
27 for administrative costs and a maximum of 10 percent to market  
28 and promote the plate. The balance of such fees shall be used to

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29 | provide educational materials, athletic equipment,  
 30 | transportation, food, medical checkups, counseling,  
 31 | scholarships, and other direct expenses incurred by the league  
 32 | in conducting its youth programs.

33 |       Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 385**

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Council/Committee hearing bill: Transportation Committee  
2 Representative(s) Jordan offered the following:

4 **Amendment (with directory and title amendments)**

5 On line 33 insert:

6 Section 2. Subsection (4) of section 320.08068, Florida  
7 Statutes, is amended to read:

8 320.08068 Motorcycle specialty license plates.--

9 (4) A license plate annual use fee of \$15 shall be  
10 collected for each motorcycle specialty license plate. Annual  
11 use fees shall be distributed to The Able Trust as custodial  
12 agent. The Able Trust may retain a maximum of 10 percent of the  
13 proceeds from the sale of the license plate for administrative  
14 costs. The Able Trust shall distribute the remaining funds as  
15 follows:

16 (a) Twenty-five percent to the Brain and Spinal Cord  
17 Injury Program Trust Fund.

18 (b) Twelve and one-half ~~Twenty-five~~ percent to Prevent  
19 Blindness Florida.

20 (c) Twelve and one-half percent to the Blind Services  
21 Foundation of Florida.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

(d)(e) Twenty-five percent to the Foundation for Vocational Rehabilitation to support the Personal Care Attendant Program pursuant to s. 413.402.

(e)(d) Twenty-five percent to the Florida Association of Centers for Independent Living to be used to leverage additional funding and new sources of revenue for the centers for independent living in this state ~~for the purpose of setting up direct support organizations for each center, and for programs and activities serving disabled Floridians. Each center participating in the development of a direct support organization shall be eligible to apply through the Association for a startup grant of up to \$50,000. Thereafter, to the extent that funds are available, each participating center may apply for funds in the form of matching grants. The first year, the centers shall provide 25 cents for each dollar requested. The second year, the center shall provide 50 cents to each dollar requested, and thereafter, the center shall provide a dollar for dollar match for each dollar requested. The match shall be from private, nongovernmental sources.~~

===== T I T L E A M E N D M E N T =====

On page 1, line 9, after the semicolon,  
insert:

amending s. 320.08068, F.S.; revising provisions governing distribution of the proceeds from the sale of motorcycle specialty license plates; revising the amount and permissible uses of the proceeds; requiring that a portion of the proceeds be distributed to the Blind Services Foundation of Florida;

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 473  
**SPONSOR(S):** Kravitz  
**TIED BILLS:**

Salvage Motor Vehicle Dealers

**IDEN./SIM. BILLS:** SB 1326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>		Thompson <u>J.T.</u>	Miller <u>P.M.</u>
2) <u>Criminal Justice Committee</u>			
3) <u>Transportation &amp; Economic Development Appropriations Committee</u>			
4) <u>State Infrastructure Council</u>			
5) _____			

### SUMMARY ANALYSIS

Florida law does not provide procedures requiring salvage motor vehicle dealers to contact law enforcement before the dismantling, destruction, and change of identity of salvaged motor vehicles to determine if the vehicle is stolen. Current law does require that a vehicle going to a salvage motor vehicle dealer be accompanied by a title certificate, a salvage title, or a certificate of destruction. If the title has been surrendered to the state, the vehicle must be accompanied by a notarized affidavit signed by the owner that the title has been returned to the state.

HB 473 provides the following procedures that salvage motor vehicle dealers must follow in order to destroy, dismantle, or change a motor vehicle that was received in the course of business:

- Requiring salvage motor vehicle dealers to notify a local law enforcement agency of a vehicle that has been received by the dealer in the course of business;
- Requiring salvage motor vehicle dealers to receive confirmation from a local law enforcement agency that the motor vehicle has not been reported stolen; and
- Requiring salvage motor vehicle dealers to maintain records of notification and confirmation, requiring what the records are to include, and requiring that the records be maintained and available for inspection for two years.

The bill provides that violations are a criminal infraction punishable as a first degree misdemeanor. A person found guilty of violations related to this provision could be fined up to a \$1,000 plus applicable fees and court costs and receive a term of imprisonment not exceeding 1 year.

HB 473 does not raise any apparent constitutional or legal issues. It may have a fiscal impact on the state and local governments and on the private sector. The bill would take effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates additional responsibilities for salvage motor vehicle dealers and law enforcement.

Promote personal responsibility – The bill provides criminal penalties for wrongful conduct.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Salvage motor vehicle dealers are defined in s. 320.27, F.S., as any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

Section 319.30, F.S., provides that when a motor vehicle is sold, transported, or delivered to a salvage motor vehicle dealer, it is to be accompanied by:

- A properly endorsed certificate of title, salvage certificate of title, or vehicle certificate of destruction issued by the Department of Highway Safety and Motor Vehicles (DHSMV); or
- If the certificate of title has been surrendered to DHSMV, a notarized affidavit signed by the owner stating that the title has been returned to the State of Florida.

Florida law does not provide procedures requiring salvage motor vehicle dealers to contact law enforcement before the dismantling, destruction, and change of identity of salvaged motor vehicles to determine if the vehicle is stolen.

According to the Jacksonville Sheriff's Office, certain salvage motor vehicle dealers or "crusher/shredding companies" are taking possession of stolen motor vehicles and processing them without proper identification. The following issues are contributing to the destruction, dismantling, or changing of stolen motor vehicles or mobile homes:

- There are no requirements for checking motor vehicles against the stolen vehicle database prior to destruction, dismantling, or changing;
- There is no requirement to supply law-enforcement with the identity of the vehicles prior to destruction, dismantling, or changing;
- There is no requirement for salvage motor vehicle dealers to keep their records filed in retrievable and/or legible order;
- The salvage motor vehicle dealers don't always confirm incoming motor vehicles to the accompanying, signed affidavits; and
- The affidavits required in statute are not always notarized and this may allow the salvage motor vehicle dealers to escape responsibility.

##### Proposed Changes

HB 473 provides certain procedures for salvage motor vehicle dealers to follow in order to prevent the destruction, dismantlement, or change of stolen motor vehicles received in the course of business, and creates penalties for violations of these requirements. Significant changes made by HB 473 include:

- Requiring salvage motor vehicle dealers to notify a local law enforcement agency of a vehicle that has been received by the dealer in the course of business;
- Requiring salvage motor vehicle dealers to receive confirmation from a local law enforcement agency that the motor vehicle has not been reported stolen;

- Requiring the salvage motor vehicle dealer to maintain legible records of that notification and confirmation;
- The records are to include a complete description of the vehicle, including the following:
  - Vehicle identification number;
  - Name of the law enforcement agency notified;
  - Date of the notification; and
  - Name of the officer or deputy sheriff who confirmed that the motor vehicle had not been reported stolen.
- The records required by this paragraph must be maintained at the place of business of the salvage motor vehicle dealer for a period of 2 years from the date of notification and are to be made available for inspection upon request by any law enforcement officer during that 2-year period.

The bill provides that violations are a criminal infraction punishable as a first degree misdemeanor. A person found guilty of violations related to this provision could be fined up to a \$1,000 plus applicable fees and court costs and receive a term of imprisonment not exceeding 1 year.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 319.30, F.S., requiring salvage motor vehicle dealers to notify and confirm that a motor vehicle is not reported stolen before destroying, dismantling, or changing the motor vehicle; requiring salvage motor vehicle dealers to maintain a record retention schedule; providing penalties for violations;

**Section 2.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

See Fiscal Comments.

##### 2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

See Fiscal Comments.

##### 2. Expenditures:

See Fiscal Comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Salvage motor vehicle dealers could incur expenses related to notifying local law enforcement agencies when a motor vehicle is received, maintaining records of notification and confirmation for two years, and making the records available for inspection during this two year period.

#### D. FISCAL COMMENTS:

A person found guilty of violations related to this provision could be fined up to a \$1,000 plus applicable fees and court costs and receive a term of imprisonment not exceeding 1 year. The fees and court

costs vary from county to county. The bill may have an impact on the county courts and on county jail populations, however, the impact is indeterminate because the number of criminal cases brought under the new law cannot be predicted. Court related revenues and the State General Revenue Fund could have a positive impact from additional fines and fees, however, the impact would also be indeterminate.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

No additional rulemaking authority is required to implement the provisions of this bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

HB 473

2006

A bill to be entitled

An act relating to salvage motor vehicle dealers; amending s. 319.30, F.S.; requiring a salvage motor vehicle dealer to notify a law enforcement agency and receive confirmation that a motor vehicle is not reported as stolen before destroying, dismantling, or changing the motor vehicle; requiring the dealer to maintain records of the notification and confirmation for a certain time period; requiring the dealer to provide law enforcement agencies with access to such records; providing penalties for violation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of section 319.30, Florida Statutes, is redesignated as paragraph (d) and a new paragraph (c) is added to that subsection to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.--

(2)

(c) A salvage motor vehicle dealer shall not destroy, dismantle, or change a motor vehicle that has been received by that dealer in the course of business without first notifying a law enforcement agency with jurisdiction over the property where the vehicle is located and receiving confirmation from that law enforcement agency that the motor vehicle is not reported as stolen. The salvage motor vehicle dealer shall maintain legible records of that notification and confirmation, which records

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29 shall include a complete description of the vehicle, including  
30 the vehicle identification number, the name of the law  
31 enforcement agency notified, the date of the notification, and  
32 the name of the officer or deputy sheriff who confirmed that the  
33 motor vehicle had not been reported stolen. The records required  
34 by this paragraph shall be maintained at the place of business  
35 of the salvage motor vehicle dealer for a period of 2 years from  
36 the date of notification and shall be made available for  
37 inspection upon request by any law enforcement officer during  
38 that 2-year period. A person who willfully violates this  
39 paragraph commits a misdemeanor of the first degree, punishable  
40 as provided in s. 775.082 or s. 775.083.

41       Section 2. This act shall take effect July 1, 2006.